

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CYRUS YAVARI,

Petitioner,

CASE NO. 2:07-cv-480

JUDGE FROST

MAGISTRATE JUDGE ABEL

v.

J. WOLFE, WARDEN,

Respondent.

OPINION AND ORDER

On April 21, 2008, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus be dismissed as barred by the one-year statute of limitations under 28 U.S.C. §2254. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED** and this action hereby is **DISMISSED**.

Petitioner again argues that this habeas corpus petition is timely because his attorney died prior to perfecting his notice of appeal, and because petitioner did not know about and was told by the trial court that he had no right to appeal. Additionally, petitioner again contends that actual innocence justifies equitable tolling of the statute of limitations in this case.

For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, this Court likewise is not persuaded by petitioner's arguments. The trial court did not advise petitioner that he had no right to appeal, but that by pleading guilty he would be giving

up the right to appeal an adverse verdict by the jury. *See Exhibits to Objections*. Further, since according to petitioner, defense counsel advised him he would file an appeal but died before he could do so, petitioner's allegation that he did not know he could file an appeal is not worthy of credit. Finally, as discussed by the Magistrate Judge, the record fails to reflect that petitioner exercised diligence in filing his appeal or that actual innocence justifies equitable tolling of the statute of limitations.

This Court has carefully reviewed the entire record. Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted *de novo* review of the *Report and Recommendation*. For the foregoing reasons and for reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action hereby is **DISMISSED**.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
United States District Judge